

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SARAH DEMING,

Plaintiff,

No. 17-11285

v.

Hon. Nancy G. Edmunds

FOX ENTERTAINMENT GROUP INC.,

Defendant.

**OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR VOLUNTARY
DISMISSAL WITHOUT PREJUDICE**

On April 24, 2017, Sarah Deming ("Plaintiff") filed her original complaint. On November 8, 2017, Plaintiff amended the complaint to name Twentieth Century Fox Film Corporation Inc. ("Defendant") as the proper defendant having previously named a different company. (Dkt. 25.) Plaintiff subsequently dismissed all the other defendants named in the original complaint, leaving only Defendant.

On December 5, 2017, Plaintiff requested a summons for Defendant which the Court issued the same day. Plaintiff then failed to effectuate service. On April 16, 2018, the Court issued an Order to Show Cause [27] based on Plaintiff's failure to prosecute. On April 26, 2018, Plaintiff filed a Motion to Dismiss Without Prejudice [28].

The Federal Rule of Civil Procedure 41(a)(1) governs this motion. It provides that "the plaintiff may dismiss an action without a court order by filing; (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." Fed.R.Civ.P.

41(a)(1)(A)(i), (ii). The Court has no discretion to deny a voluntary dismissal so long as notice of the dismissal is filed before an answer or motion for summary judgment is served. *McCord v. Bd. of Educ. Of Fleming Cty., Kentucky*, No. 17-5548, 2018 WL 1724560, at *5 (6th Cir. Jan. 30, 2018) (citing *Aamot v. Kassel*, 1 F.3d 441, 443 (6th Cir. 1993)). Defendant has not yet filed an answer to Plaintiff's complaint or motion for summary judgment. Indeed, Defendant has not yet been served with the complaint at all. "Rule 41(a)(1) explicitly leaves the option to dismiss in the plaintiff's hands; once the plaintiff gives his notice, the lawsuit is no more." *Aamot*, 1F.3d at 444.

Accordingly, the Court concludes that Plaintiff has voluntarily dismissed her suit without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). "[Plaintiff's] unilateral notice was the legally operative act of dismissal pursuant to Rule 41(a)(1)(i), making the district court's subsequent order to the same effect superfluous." *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 541 (6th Cir. 2001).

For the reasons stated above, Plaintiff's Voluntary Motion for Dismissal Without Prejudice (Dkt. 28) is GRANTED.

SO ORDERED

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: May 10, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 10, 2018, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager